~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 29, 2015

**S. 165**

Introduced by Senators Hembree, Turner, Bennett and Massey

S. Printed 4/29/15--S.

Read the first time January 13, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 165) to amend Section 1‑23‑600 of the 1976 Code, relating to hearings and proceedings in the Administrative Law Court, to provide that a request for a contested case, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 2, by striking lines 14 through 33, in Section 1-23-600(H)(2), as contained in SECTION 1, and inserting therein the following:

/ (2) A request for a contested case hearing ~~for an agency order stays the order~~ from an agency decision granting a license stays the license ~~A request for a contested case hearing for an order to revoke or suspend a license stays the revocation or suspension. A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing for a decision to issue a new license stays all actions for which the license is a prerequisite;~~ for thirty days and, if a request for preliminary injunctive relief is filed with the Administrative Law Court, until an order granting or denying preliminary injunctive relief is issued by the Administrative Law Court at which time the stay is lifted; provided, however, that matters not affected by the request may not be stayed by the filing of the request. If the request is filed for a subsequent license related to issues substantially similar to those considered in a previously licensed matter, the license may not be automatically stayed by the filing of the request. ~~If the requesting party asserts in the request that the issues are not substantially similar to those considered in a previously licensed matter, then the license must be stayed until further order of the Administrative Law Court.~~ A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing of an order to revoke, enforce, or suspend a license stays the revocation or suspension. Requests for contested case hearings challenging only the amount of fines or penalties stays the obligation to pay such monetary fines and penalties until a final order is issued by the Administrative Law Court, but ~~must be deemed~~ does not ~~to~~ affect those portions of such orders imposing substantive requirements. /

Amend the bill further, as and if amended, page 2, by striking line 40, in Section 1‑23‑600(H)(4), as contained in SECTION 1, and inserting therein the following:

/ ~~subsection~~ for preliminary injunctive relief pursuant to applicable law. ~~Upon~~  /

Amend the bill further, as and if amended, page 3, by striking lines 4 through 8, in Section 1-23-600(H)(4), as contained in SECTION 1, and inserting therein the following:

/ ~~after the hearing is concluded.~~ Any preliminary injunction ordered by the Administrative Law Court may require the posting of a bond or other security sufficient for the cost and expense of the litigation and project delay as demonstrated by an affidavit made on a good faith estimate of the cost and expense. State agencies are exempt from the requirement to post a bond under this section. /

Renumber sections to conform.

Amend title to conform.

GREG HEMBREE for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

The Administrative Law Court reports that there will be no expenditure impact on the general fund, federal funds, or other funds.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill pertains to hearings and proceedings of the Administrative Law Court and allows that a request for a contested case hearing stay at the agency order for thirty days. This bill also provides that once a contested case is initiated a party may request injunctive relief from the Administrative Law Judge, and further provides that any injunction ordered by the court requires posting of sufficient bond or security to cover a good faith estimate of the cost and expense of the litigation and project delay.

The Administrative Law Court reports that there will be no expenditure impact from the bill on the general fund, federal funds, or other funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 1‑23‑600 OF THE 1976 CODE, RELATING TO HEARINGS AND PROCEEDINGS IN THE ADMINISTRATIVE LAW COURT, TO PROVIDE THAT A REQUEST FOR A CONTESTED CASE HEARING FOR AN AGENCY ORDER STAYS THE ORDER FOR THIRTY DAYS, PROVIDED, HOWEVER, THAT MATTERS NOT AFFECTED BY THE REQUEST MAY NOT BE STAYED BY THE FILING OF THE REQUEST, AND TO DELETE THE PROVISIONS THAT A REQUEST FOR A CONTESTED CASE HEARING FOR AN ORDER TO REVOKE OR SUSPEND A LICENSE STAYS THE REVOCATION OR SUSPENSION, AND FOR A DECISION TO RENEW A LICENSE FOR AN ONGOING ACTIVITY STAYS THE RENEWED LICENSE, AND TO PROVIDE THAT AFTER A CONTESTED CASE IS INITIATED BEFORE THE ADMINISTRATIVE LAW COURT, A PARTY MAY MOVE BEFORE THE PRESIDING ADMINISTRATIVE LAW JUDGE FOR INJUNCTIVE RELIEF PURSUANT TO APPLICABLE LAW, AND TO DELETE THE PROVISION THAT THE COURT SHALL LIFT THE STAY FOR GOOD CAUSE SHOWN OR IF NO IRREPARABLE HARM WILL OCCUR, THEN THE STAY SHALL BE LIFTED, AND TO DELETE THE REQUIREMENT THAT A HEARING MUST BE HELD WITHIN THIRTY DAYS TO LIFT THE AUTOMATIC STAY OR FOR A DETERMINATION OF THE APPLICABILITY OF THE AUTOMATIC STAY, AND TO DELETE THE REQUIREMENT THAT THE JUDGE MUST ISSUE AN ORDER NO LATER THAN FIFTEEN BUSINESS DAYS AFTER THE HEARING IS CONCLUDED, AND TO PROVIDE THAT ANY INJUNCTION ORDERED BY THE ADMINISTRATIVE LAW COURT SHALL REQUIRE THE POSTING OF A BOND OR OTHER SECURITY SUFFICIENT FOR THE COST AND EXPENSE OF THE LITIGATION AND PROJECT DELAY AS DEMONSTRATED BY AN AFFIDAVIT MADE ON A GOOD FAITH ESTIMATE OF SUCH COST AND EXPENSE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 1‑23‑600(H) of the 1976 Code is amended to read:

“(H)(1) This subsection applies to timely requests for a contested case hearing pursuant to this section of decisions by departments governed by a board or commission authorized to exercise the sovereignty of the State.

(2) A request for a contested case hearing for an agency order stays the order~~. A request for a contested case hearing for an order to revoke or suspend a license stays the revocation or suspension. A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing for a decision to issue a new license stays all actions for which the license is a prerequisite;~~ for thirty days; provided, however, that matters not affected by the request may not be stayed by the filing of the request. If the request is filed for a subsequent license related to issues substantially similar to those considered in a previously licensed matter, the license may not be automatically stayed by the filing of the request. ~~If the requesting party asserts in the request that the issues are not substantially similar to those considered in a previously licensed matter, then the license must be stayed until further order of the Administrative Law Court.~~ Requests for contested case hearings challenging only the amount of fines or penalties must be deemed not to affect those portions of orders imposing substantive requirements.

(3) The general rule of subsection (H)(2) does not stay emergency actions taken by an agency pursuant to an applicable statute or regulation.

(4) After a contested case is initiated before the Administrative Law Court, a party may move before the presiding administrative law judge ~~to lift the stay imposed pursuant to this subsection~~ for injunctive relief pursuant to applicable law. ~~Upon motion by any party, the court shall lift the stay for good cause shown or if no irreparable harm will occur, then the stay shall be lifted. A hearing must be held within thirty days after the motion is filed with the court and served upon the parties to lift the automatic stay or for a determination of the applicability of the automatic stay. The judge must issue an order no later than fifteen business days after the hearing is concluded.~~ Any injunction ordered by the Administrative Law Court shall require the posting of a bond or other security sufficient for the cost and expense of the litigation and project delay as demonstrated by an affidavit made on a good faith estimate of the cost and expense.

(5) A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals.

(6) Nothing contained in this subsection constitutes a limitation on the authority of the Administrative Law Court to impose a stay as otherwise provided by statute or by rule of court.”

SECTION 2. This act takes effect upon approval by the Governor.

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